

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Texas on the following

☒ Trademarks or ☐ Patents. ( ☐ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 4:11cv1018	DATE FILED 3/17/2011	U.S. DISTRICT COURT Southern District of Texas
PLAINTIFF Polycom, Inc.		DEFENDANT D&S Communications, Inc. and Dynamic Voice Data, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,783,295	3,100,113	See attached complaint
2 3,020,685	3,164,996	
3 1,794,159		
4 3,020,708		
5 3,767,458		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,784,786		
2 1,912,272		
3 2,994,870		
4 1,851,886		
5 3,164,995		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK David Bradley	(BY) DEPUTY CLERK 	DATE 3/21/2011
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

POLYCOM, INC.,	)	
	)	Civil Action No. _____
Plaintiff,	)	
	)	
vs.	)	
	)	JURY TRIAL
D&S COMMUNICATIONS, INC. and	)	
DYNAMIC VOICE DATA, INC.,	)	
	)	
Defendants.	)	
	)	
	)	

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**PLAINTIFF'S ORIGINAL COMPLAINT FOR TRADEMARK INFRINGEMENT,  
COUNTERFEITING, AND UNFAIR COMPETITION**

Plaintiff, POLYCOM, INC. ("Polycom"), a Delaware corporation, by and through its undersigned attorneys, files this Complaint against Defendants, D&S COMMUNICATIONS, INC. ("D&S"), an Illinois corporation, and DYNAMIC VOICE DATA, INC. ("DVD"), a Texas corporation.

**THE PARTIES**

1. Plaintiff, Polycom, Inc. ("Polycom"), is a Delaware corporation having a primary business address of 4750 Willow Road, Pleasanton, California 94588.

2. On information and belief, Defendant D&S Communications, Inc. ("D&S") is an Illinois corporation with its principal place of business at 1355 N McLean Blvd., Elgin, Illinois 60123. On information and belief, D&S is subject to the general and specific jurisdiction of this Court by virtue of its substantial contacts with Texas, including its participation in the acts and events occurring in this Judicial District described herein.

3. On information and belief, Dynamic Voice Data, Inc. ("DVD") is a Texas corporation with its principal place of business at 4403 Greenbriar Dr., Stafford, Texas 77477. On information and belief, DVD is subject to the general and specific jurisdiction of this Court

by virtue of its substantial contacts with Texas, including its participation in the acts and events occurring in this Judicial District described herein.

**NATURE OF THE ACTION; JURISDICTION OF THE COURT**

4. This is an action for trademark infringement, unfair competition, dilution, and counterfeiting under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1114, 1116, 1117, and 1125(a) & (c). This also an action for unfair competition and dilution under state law.

5. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's state law claims because those claims are so related to the federal claims that they form part of the same case and controversy. In addition, jurisdiction over all claims is proper under 28 U.S.C. § 1332 because there is a complete diversity of citizenship between the Plaintiff and the Defendants.

6. This Court has personal jurisdiction over Defendants in that they do business and/or reside in the State of Texas and this judicial district.

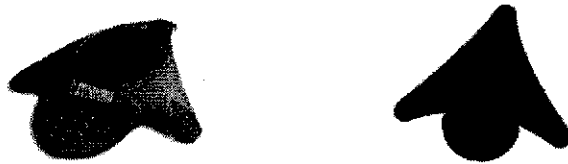
7. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c).

**ALLEGATIONS FOR ALL CLAIMS OF RELIEF**

**A. Polycom, its Business and its Marks**

8. Polycom manufactures the industry's broadest portfolio of voice, telepresence, and wireless solutions, all backed by Global Services for Polycom's famous performance and productivity. Polycom is an industry leader in the manufacture and distribution of phones for use in homes, offices, and other applications, wherein a user may desire to have a "hands-free" call. Since at least as early as 1992, Polycom has used its distinctive house mark **POLYCOM** and a distinctive configuration for its speakerphones that utilizes three radially-extending arms to create a generally triangular shape (the "Polycom Trade Dress").

Photographs of products bearing the Polycom Trade Dress are set forth below:



9. Additionally, to enhance the association of the Polycom Trade Dress with Polycom, Polycom adopted as its corporate logo a design that comprises a central triangle with three triangles extending radially from the center of the central triangle (the “Polycom Triangles Logo”) in order to accentuate the distinctive overall triangular shape of the Polycom Trade Dress and associate that shape with Polycom. A depiction of the Polycom Triangles logo is set forth below:



Advertisements featuring the POLYCOM mark, the Polycom Triangles Logo, and the Polycom Trade Dress (the POLYCOM mark and the Polycom Triangles Logo being hereinafter collectively referred to as the “Polycom House Marks”) are attached as **Exhibit A**.

10. Polycom has extensively promoted its phones bearing the Polycom House Marks and today sells the world’s most popular conference phones. Since 1992, Polycom has spent well over \$200 million on advertising and promoting its various products under the Polycom House Marks.

11. As a result of these extensive efforts, the products bearing the Polycom House Marks have received exceptional acceptance and recognition by the consuming public. Since 1992, Polycom has earned millions of dollars in revenue from the sale of products in the United States under the Polycom House Marks.

12. As a result of such efforts and acceptance by the public, the Polycom House Marks are recognized as identifying and distinguishing the quality products offered by Polycom, and Polycom has developed considerable goodwill throughout the United States. The Polycom House Marks are highly distinctive designators for Polycom and have become famous. The

Polycom House Marks and the Polycom Trade Dress and the goodwill associated therewith are valuable assets of Polycom,

13. Since at least as early as 1992, Polycom and its wholly owned subsidiary, SpectraLink Corporation ("SpectraLink"), have also used the mark **SPECTRALINK** for telephone products, including mobile and cellular telephones. Since at least as early as 2005, SpectraLink has also used the SPECTRALINK mark in a fanciful design format for such products (the SPECTRALINK mark and the SPECTRALINK design mark being hereinafter referred to collectively as the SpectraLink Marks").

14. Polycom and its subsidiary SpectraLink have extensively promoted their telephone products offered under the SpectraLink Marks. As a result of such efforts, on information and belief, the SpectraLink Marks are recognized as designations of the quality products offered currently by Polycom under the SpectraLink Marks, and considerable goodwill has been developed in those marks. The SpectraLink Marks and the goodwill associated with those marks are valuable assets of Polycom.

15. In addition to the quality products offered by Polycom under the Polycom House Marks and the SpectraLink Marks, Polycom also offers quality service and support for the products that it sells under such marks through programs such as its POLYCOM Certified Service Partner program. This program requires that a Certified Service Partner demonstrate expertise in all aspects of Polycom technology in order to become a Certified Service Partner. Through such programs, the Polycom House Marks and the SpectraLink Marks have also become designators of the quality support services offered by Polycom and its authorized representatives under the marks, including its Certified Service Partners.

**B. The Registration Of The Polycom And SpectraLink Marks**

16. In accordance with the provisions of the Lanham Act, Polycom has registered the word mark POLYCOM, U.S. Reg. Nos. 1,783,295 and 3,020,685, for selected communications

goods and services as listed in those registrations. Copies of these registrations are attached hereto in **Exhibit B**. These registrations are valid and subsisting, and have achieved incontestable status. Pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. §1115(a), the registrations are conclusive evidence of the validity of the registered mark, Polycom's ownership of the mark, and Polycom's exclusive right to use the mark in commerce on or in connection with the goods and services recited in the registrations.



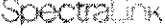

17. In accordance with the provisions of the Lanham Act, Polycom has also registered the Polycom Triangles Logo in color and in black and white for various goods and services, U.S. Reg. Nos. 1,794,159; 3,020,708; and 3,767,458, and the word mark POLYCOM combined with the Polycom Triangles Logo for various goods and services, Reg. Nos. 1,784,786 and 1,912,272. Copies of these registrations are attached hereto in **Exhibit B**. These registrations are valid and subsisting. U.S. Reg. Nos. 1,794,159; 3,020,708; 1,784,786 and 1,912,272 have obtained incontestable status. Pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. §1115(a), those four registrations are conclusive evidence of the validity of the registered marks, Polycom's ownership of the marks, and Polycom's exclusive right to use the marks in commerce on or in connection with the goods and services recited in the registrations. For U.S. Reg. No. 3,767,458, pursuant to Section 33(a) of the Lanham Act, 15 U.S.C. §1115(a), the registration is prima facie evidence of the validity of the mark, Polycom's ownership of the mark, and Polycom's exclusive right to use the mark in commerce on or in connection with the goods and services recited in the registration.

18. In accordance with the provisions of the Lanham Act, the mark SPECTRALINK has been registered for telephones and other goods listed in the registrations, U.S. Reg. Nos. 2,994,870 and 1,851,886. The mark SPECTRALINK has also been registered in connection with two distinctive designs for telephones and other listed goods, U.S. Reg. Nos. 3,164,995 and 3,164,996. Copies of these registrations are attached in **Exhibit B**. U.S. Reg. Nos. 2,994,870 and 1,851,886 are valid and subsisting and have obtained incontestable status. Pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. §1115(a), those two registrations are conclusive evidence of




the validity of the registered mark, Polycom's ownership of the mark, and Polycom's exclusive right to use the mark in commerce on or in connection with the goods recited in the registrations. U.S. Reg. Nos. 2,994,870 and 1,851,886 are valid and subsisting. Pursuant to Section 33(a) of the Lanham Act, 15 U.S.C. §1115(a), these registrations are prima facie evidence of the validity of the marks shown, Polycom's ownership of the marks, and Polycom's exclusive right to use the marks in commerce on or in connection with the goods recited in the registrations.


19. In accordance with the provisions of the Lanham Act, Polycom registered the Polycom Trade Dress as a trademark for various goods and services, U.S. Reg. No. 3,100,113. A copy of this registration is attached hereto in **Exhibit B**. This registration is valid and subsisting. Pursuant to Section 33(a) of the Lanham Act, 15 U.S.C. §1115(a), U.S. Reg. No. 3,100,113 is prima facie evidence of the validity of the Polycom Trade Dress, Polycom's ownership of the Polycom Trade Dress and Polycom's exclusive right to use the Polycom Trade Dress in commerce on or in connection with the goods and services recited in the registration.

20. As a result of Polycom's substantial use and promotion, the Polycom House Marks, the Polycom Trade Dress, and the SpectraLink Marks have acquired great value as specific identifiers of Polycom's products and services, and serve to identify and distinguish Polycom's products and services from those of others. On information and belief, customers in this Judicial District and elsewhere readily recognize the Polycom House Marks, the Polycom Trade Dress, and the SpectraLink Marks (hereinafter referred to collectively as the "Polycom Marks") as distinctive designations of the origin of Polycom's voice, telepresence, and wireless solutions products and services. The Polycom Marks are intellectual property assets of enormous value as symbols of Polycom and its quality products, services, and goodwill. A table illustrating the registered Polycom Marks enumerated in Paragraphs 16–19 is presented below for reference:

Mark	Reg. No.	Reg. Date	Goods and Services
<b>POLYCOM</b>	1,783,295	07/20/1993	Teleconferencing products; namely, audio and graphic terminals, audio and graphic computer software, and audio and graphic bridges used for teleconferencing.
<b>POLYCOM</b>	3,020,685	11/29/2005	Audio teleconferencing; network conferencing services; providing facilities and equipment for video conferencing; providing telephone conferencing services; telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions; video teleconferencing; web conferencing services; wireless electronic transmission of voice signals, data, facsimiles, images and information.
<b>POLYCOM w/ Triangles Logo:</b>  <b>POLYCOM</b>	1,784,786	07/27/1993	Teleconferencing products; namely, audio and graphic terminals, audio and graphic computer software, and audio and graphic bridges used for teleconferencing.
<b>POLYCOM w/ Triangles Logo above:</b>  <small>POLYCOM</small>	1,912,272	08/15/1995	Teleconferencing products; namely, audio and graphic terminals, audio and graphic computer software, and audio and graphic bridges used for teleconferencing.
<b>SPECTRALINK Logo (in color):</b> 	3,164,995	10/31/2006	Telephones, telecommunication equipment and software, namely, wireless telephones; batteries; battery chargers; wireless handheld communication devices to access local wireless networks; computer communications servers for managing the quality of voice transmissions sent in a local wireless or computer network; computer hardware and software for connecting private branch exchange equipment or telephone lines to a local wireless or computer network; computer hardware and software for sending data transmissions, by way of local wireless network or computer network, to wireless handheld communication devices; and computer software for managing the quality of voice transmissions in a local wireless or computer; computer software and hardware for telephone systems, not for use with modems.
<b>SPECTRALINK Logo:</b> 	3,164,996	10/31/2006	Telephones, telecommunication equipment and software, namely, wireless telephones; batteries; battery chargers; wireless handheld communication devices to access local wireless networks; computer communications servers for managing the quality of voice transmissions sent in a local wireless or computer network; computer hardware and software



Mark	Reg. No.	Reg. Date	Goods and Services
			for connecting private branch exchange equipment or telephone lines to a local wireless or computer network; computer hardware and software for sending data transmissions, by way of local wireless network or computer network, to wireless handheld communication devices; and computer software for managing the quality of voice transmissions in a local wireless or computer; computer software and hardware for telephone systems, not for use with modems.
<b>SPECTRALINK</b>	2,994,870	09/13/2005	Telephones, telecommunication equipment and software, namely, wireless telephones; batteries; battery chargers; wireless handheld communication devices to access local wireless networks; computer communications servers for managing the quality of voice transmissions sent in a local wireless or computer network; computer hardware and software for connecting private branch exchange equipment or telephone lines to a local wireless or computer network; computer hardware and software for sending data transmissions, by way of local wireless network or computer network, to wireless handheld communication devices; and computer software for managing the quality of voice transmissions in a local wireless or computer.
<b>SPECTRALINK</b>	1,851,886	08/30/1994	Computer software and hardware for telephone systems, not for use with modems.
<b>Triangles Logo:</b> 	1,794,159	09/21/1993	Teleconferencing products; namely, audio and graphic terminals, audio and graphic computer software, and audio and graphic bridges used for teleconferencing.
<b>Triangles Logo:</b> 	3,020,708	11/29/2005	Audio teleconferencing; network conferencing services; providing facilities and equipment for video conferencing; providing telephone conferencing services; telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions; video teleconferencing; web conferencing services; wireless electronic transmission of voice signals, data, facsimiles, images and information.
<b>Triangles Logo (Red):</b> 	3,767,458	03/30/2010	Computer hardware; Computer hardware and peripheral devices; Computer software and hardware for teleconferencing and video conferencing; Computer software for integrating, controlling, enhancing, securing, and managing video, voice and data communications; Digital telephone platforms and software; Speakerphones. Audio teleconferencing; Network conferencing

Mark	Reg. No.	Reg. Date	Goods and Services
			services; Providing facilities and equipment for telepresence conferencing; Providing facilities and equipment for video conferencing; Providing telephone conferencing services; Provision of video conferencing services; Telecommunication services, namely, local and long distance transmission of voice, data, graphics and video by means of broadband, copper and optical or wireless networks; Telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions; Teleconferencing and video conferencing services; Telepresence conferencing services; Video conferencing services; Video teleconferencing; Web conferencing services; Wireless electronic transmission of voice signals, data, facsimiles, images and information.
<b>Speakerphone Trade Dress:</b> 	3,100,113	06/06/2006	Computer software for teleconferencing and video conferencing; computer software for integrating, controlling, enhancing, securing, and managing video, voice and data communications; computer hardware; speakerphones; teleconferencing, video conferencing and electronic conferencing hardware. Audio teleconferencing; network conferencing services; providing facilities and equipment for video conferencing; providing telephone conferencing services; telecommunication services, namely, local and long distance transmission of voice, data, graphics by means of telephone, telegraphic, cable, and satellite transmissions; video teleconferencing; web conferencing services; wireless electronic transmission of voice signals, data, facsimiles, images and information.

**C. Defendants' Unauthorized Use of The Polycom Marks and the SpectraLink Marks**

21. Upon information and belief, co-Defendant D&S is engaged in the business of repairing and refurbishing telecommunications and data equipment.

22. Upon information and belief, co-Defendant DVD is engaged in the business of providing components and replacement parts for various brand name telecommunications and data equipment.

23. At no time has Polycom given Defendants license, permission, or authority to use and display the Polycom Marks or the SpectraLink Marks or counterfeit versions of the Polycom Marks or the SpectraLink Marks on Defendants' products or Defendants' websites in conjunction with offered services.

24. At no time has Polycom given Defendants license, permission, or authority to serve as an authorized repair vendor of Polycom products.

25. Polycom first learned in mid-2009 that D&S was holding itself out as an authorized partner of Polycom and was misusing Polycom trademarks on its website at [www.dscomm.com](http://www.dscomm.com). On August 7, 2009, Polycom sent a cease and desist letter to D&S' CEO, Mr. Jason Kubasak. A copy of the letter is attached as **Exhibit C**.

26. In telephone conversations and email communications, Mr. Kubasak expressed his belief that D&S was an authorized Polycom Partner. Polycom's outside counsel confirmed that D&S was not an authorized Partner and in a follow-up email reiterated the steps that D&S needed to immediately take to avoid liability. Mr. Kubasak responded with assurances that the requested changes to the website would be made that day. A copy of the email chain evidencing these communications is attached as **Exhibit D**.

27. In September 2009, Polycom's outside counsel again contacted D&S regarding changes to the website that had been made and additional changes that needed to be made. Again, Mr. Kubasak stated that the referenced webpage would be deleted from the D&S server. A copy of the email exchange is attached as **Exhibit E**.

28. In 2010, Polycom discovered that Defendant D&S was again promoting itself to the consuming public through the use of the Polycom Marks in a manner that implied that it was an authorized Polycom repair vendor. Polycom further discovered that D&S was potentially using counterfeit or otherwise non-OEM parts in its repairs of Polycom products.

29. In November 2010, Polycom commenced two separate investigations to conduct an analysis and evaluation of D&S's capability for repairing Polycom telephone sets in

accordance with Polycom quality standards.<sup>1</sup> One investigation involved the Polycom SpectraLink LTB100 unit, and the other investigation involved the Polycom SpectraLink PTB410 unit. The investigations were completed by January 5, 2011.

**1. Polycom SpectraLink LTB100 Investigation**

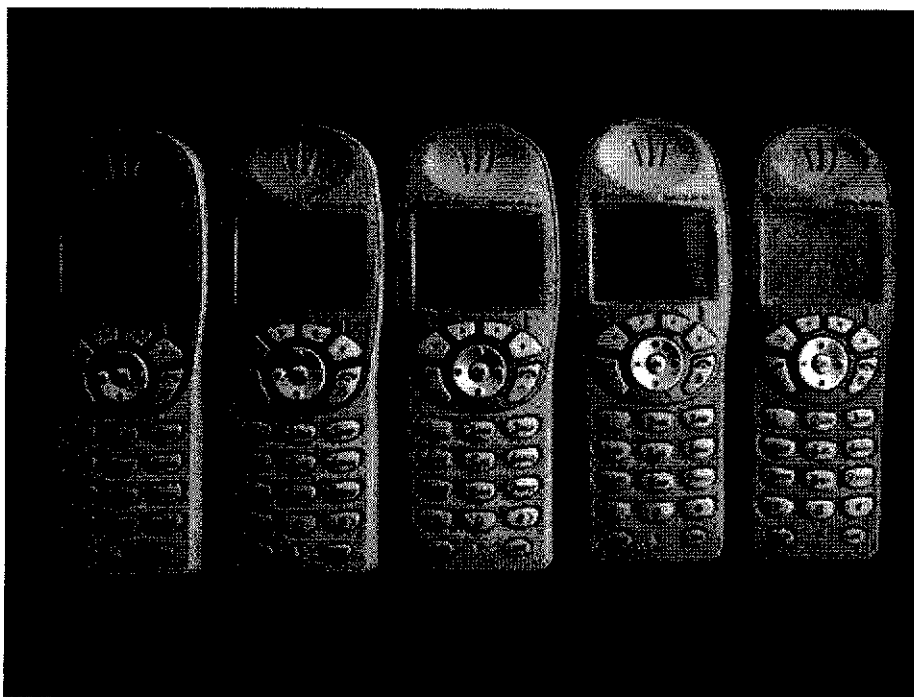
30. For the Polycom SpectraLink LTB100 investigation, five defective Polycom SpectraLink LTB100 telephony units were shipped to D&S on November 15, 2010 for repair. The five defective Polycom SpectraLink LTB100 units that were sent to D&S had damaged LCDs, damaged plastics, or non-functioning microphones. All defective units passed a standard proprietary Polycom Test procedure before being sent to D&S. One unit failed the so-called Polycom PBox test due to having a serial number ("S/N") error. D&S was instructed to return the EXACT same S/N's as shipped to ensure a more proper data comparison. The units were returned on December 14, 2010.

31. Phones bearing the same S/N's as those originally shipped to D&S were returned. Upon inspection, the repairs made by D&S were deemed to be of a low quality. Sixty percent of the "repaired" units failed to pass the standard Polycom Test procedure upon return from D&S. The repairs were made with parts that were not manufactured under Polycom's specifications or control, but still bore counterfeits of the Polycom Marks. On information and belief, at least some of the parts bearing the counterfeits of the Polycom Marks were supplied by co-Defendant, DVD.

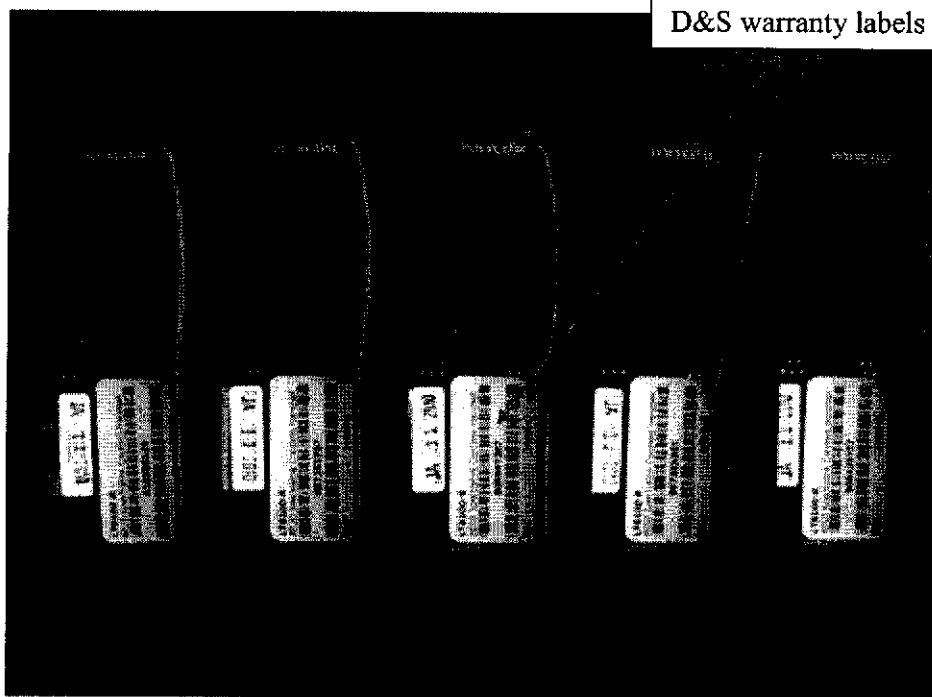
32. There were various differences between the D&S-repaired units and official, i.e., Polycom-repaired, units. Notwithstanding these differences and the lack of authorization, the repaired units bore counterfeits of the Polycom Marks. The pictures and captions below detail some of the differences and the unauthorized use of the Polycom Marks:

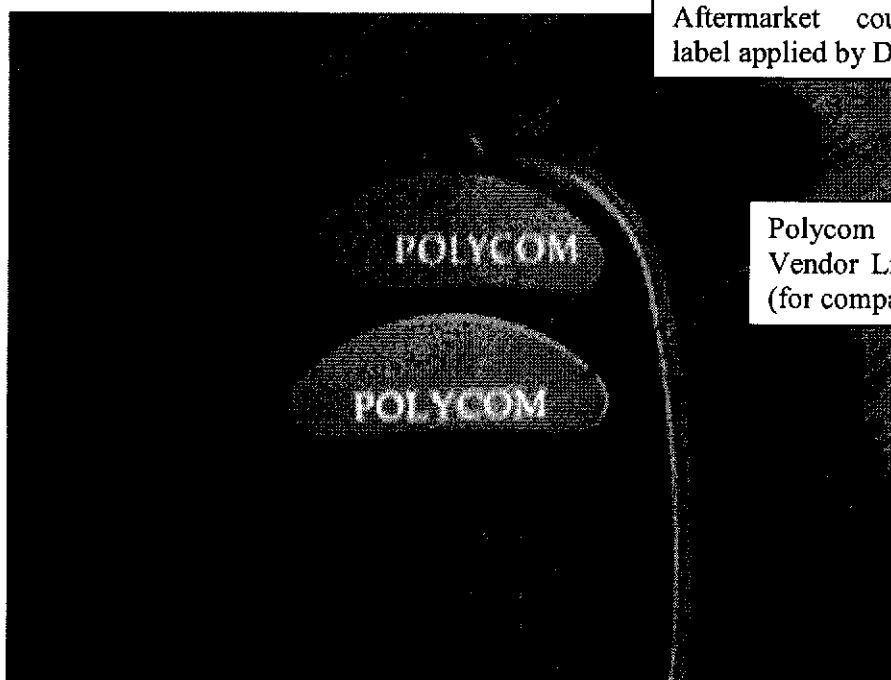
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<sup>1</sup> See Declaration of John Nicholson, attached as Exhibit F.



**Units as received from D&S**





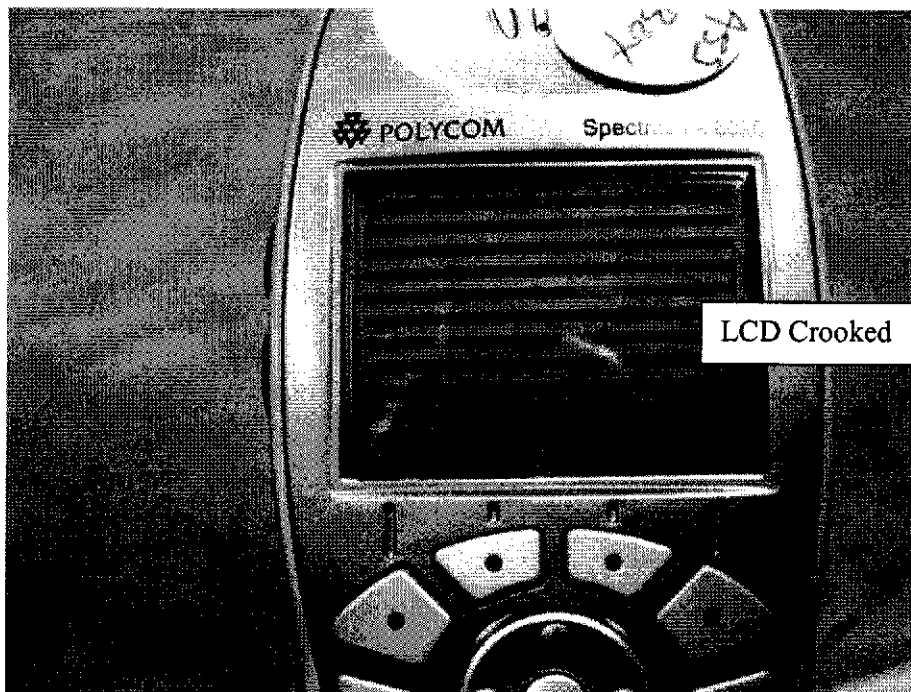
Aftermarket counterfeit label applied by D&S

Polycom Authorized Vendor List (AVL) label (for comparison)



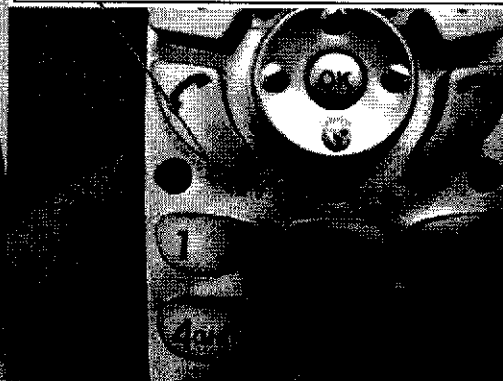
Aftermarket counterfeit bezel applied by D&S: Polycom Logo different color and bezel a slightly different blue

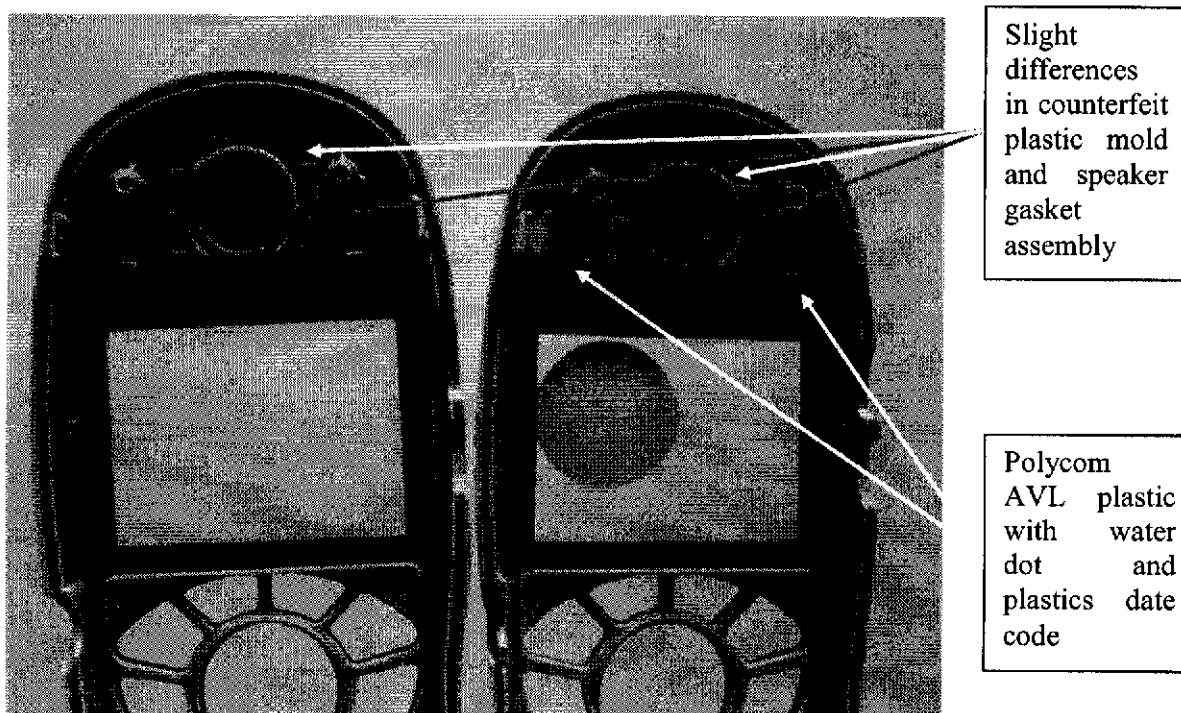
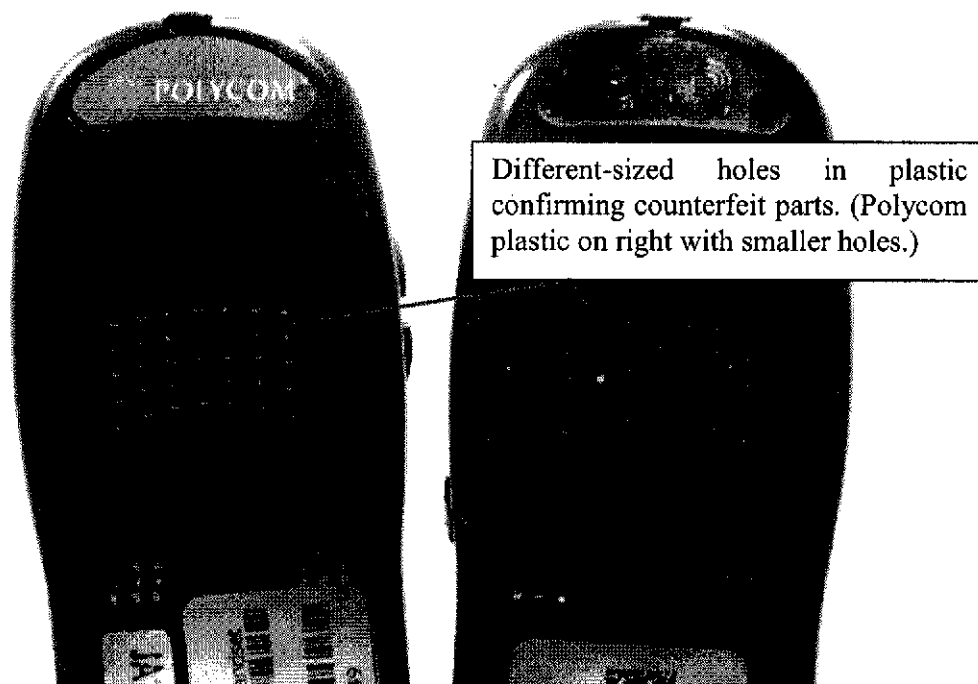
Polycom AVL bezel (for comparison)



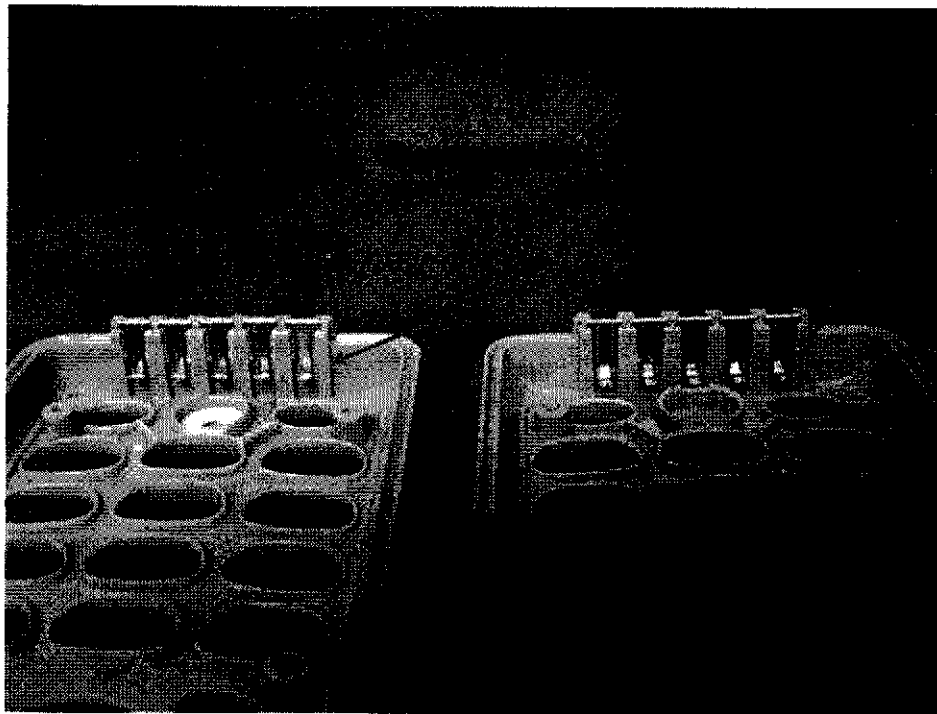
Returned unit with front cover removed. Units are being shipped from D&S with the black gasket material still intact. With black gasket removed, the counterfeit manufacturer is revealed to be co-Defendant, DVD.

Only one of the returned units had this DVD keypad, indicating that D&S is re-using old keypads.



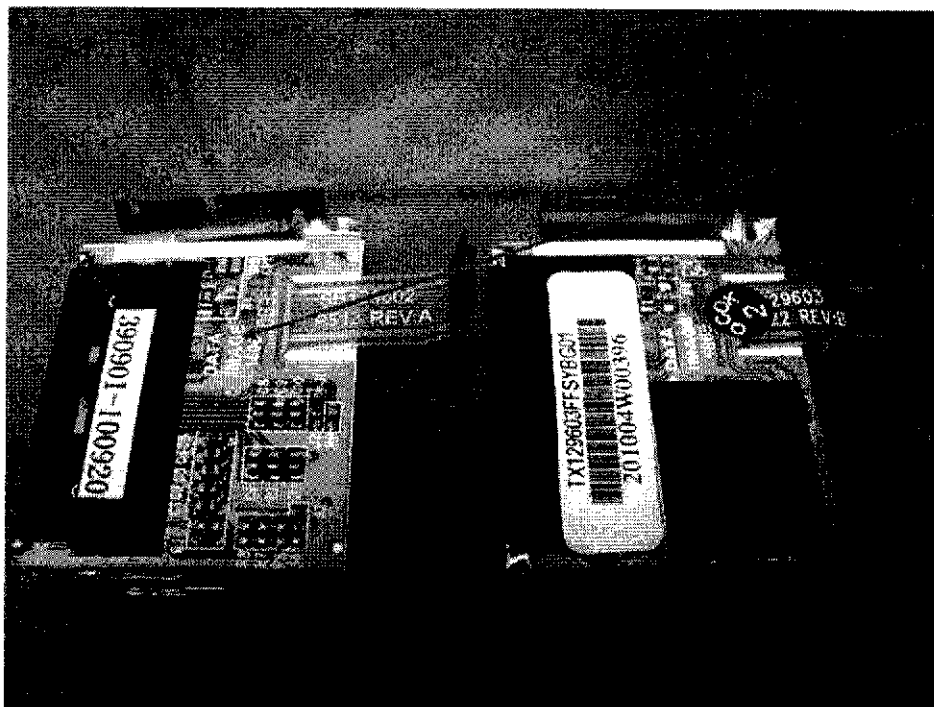






Battery contacts were also different size (smaller) on the D&S units

NEW Polycom AVL Battery Contacts



D&S LCD. 2 of 5 D&S units were returned with REV "A" LCD's from an approved AVL source.

NEW Polycom AVL LCD (REV B) was used in 3 out of the 5 returned units.

33. While each of the LCDs on the Polycom SpectraLink LTB100 units returned from D&S were from a Polycom Authorized Vendor List (AVL) source, two of the five LCDs were a "Rev A" version instead of the "Rev B" version, which is currently being used in production.

34. Test data on the returned units was mixed. For example, all units passed Selftest and PBox tests upon return. However, even though all five units that were shipped to D&S passed the standard Polycom Test procedure before shipping, upon return from D&S, three of the five units failed the Polycom Test procedure. Failing the Polycom Test procedure can be an indication that the units are more likely to fail or not perform up to Polycom quality standards in the future.

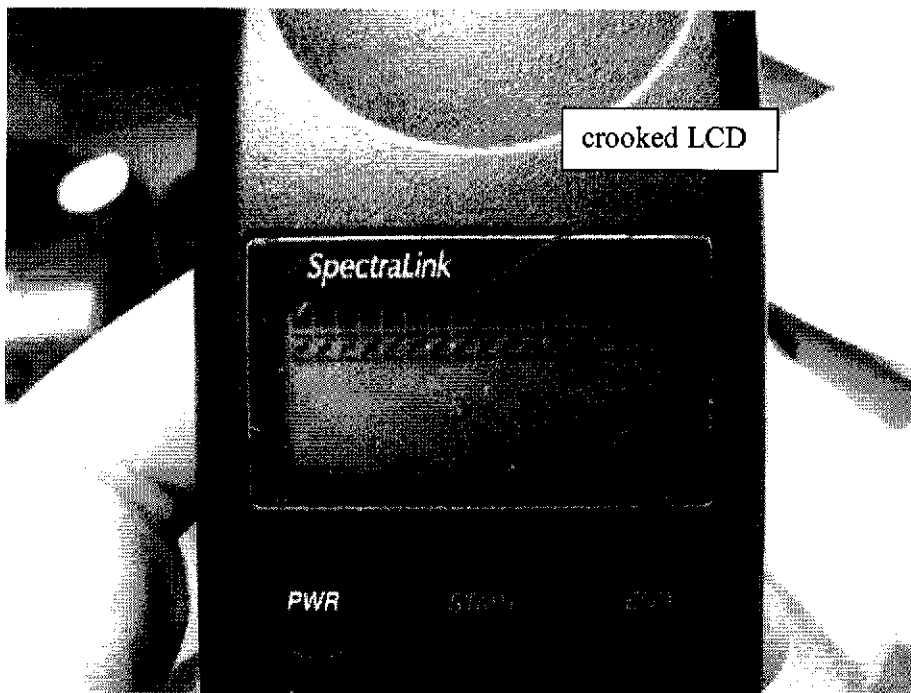
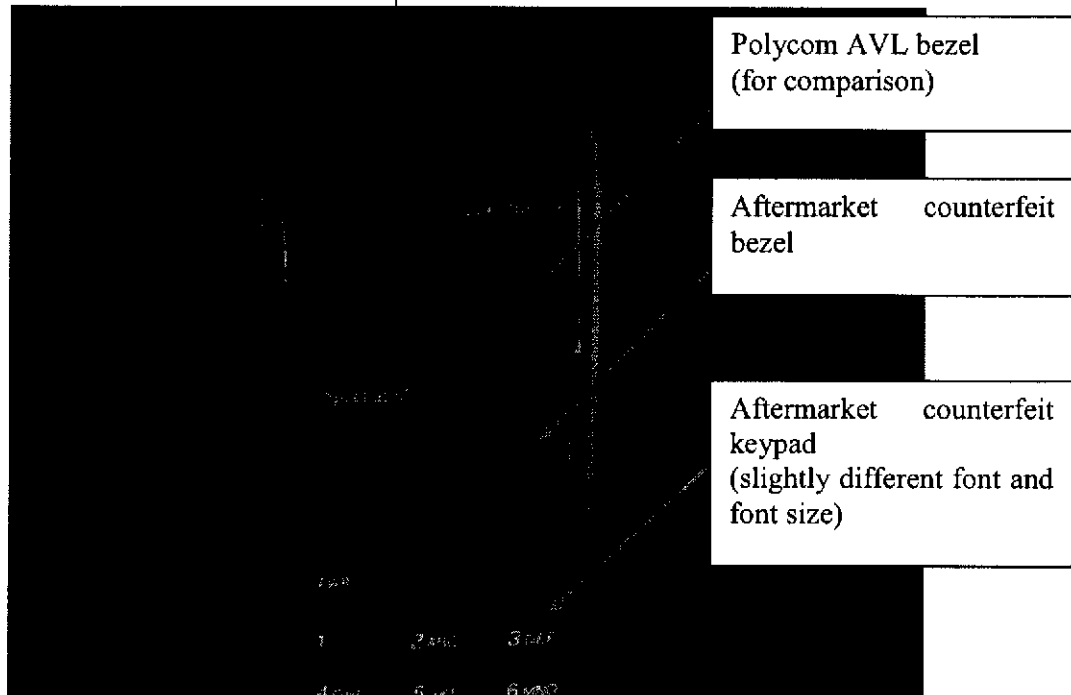
35. The above unauthorized use by Defendants of counterfeits of the Polycom Marks in connection with the parts used in the repair and refurbishing services is likely to cause confusion and allows D&S to palm off its counterfeit telephone software and hardware products as genuine POLYCOM products. On information and belief, Defendants' acts complained of herein are willful and deliberate, making this an exceptional case.

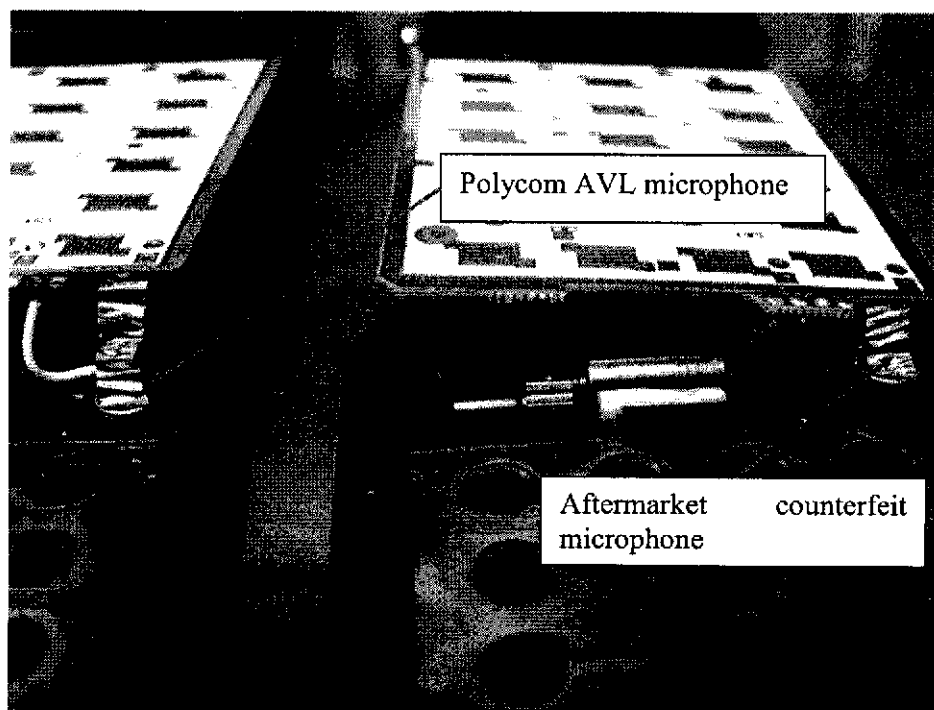
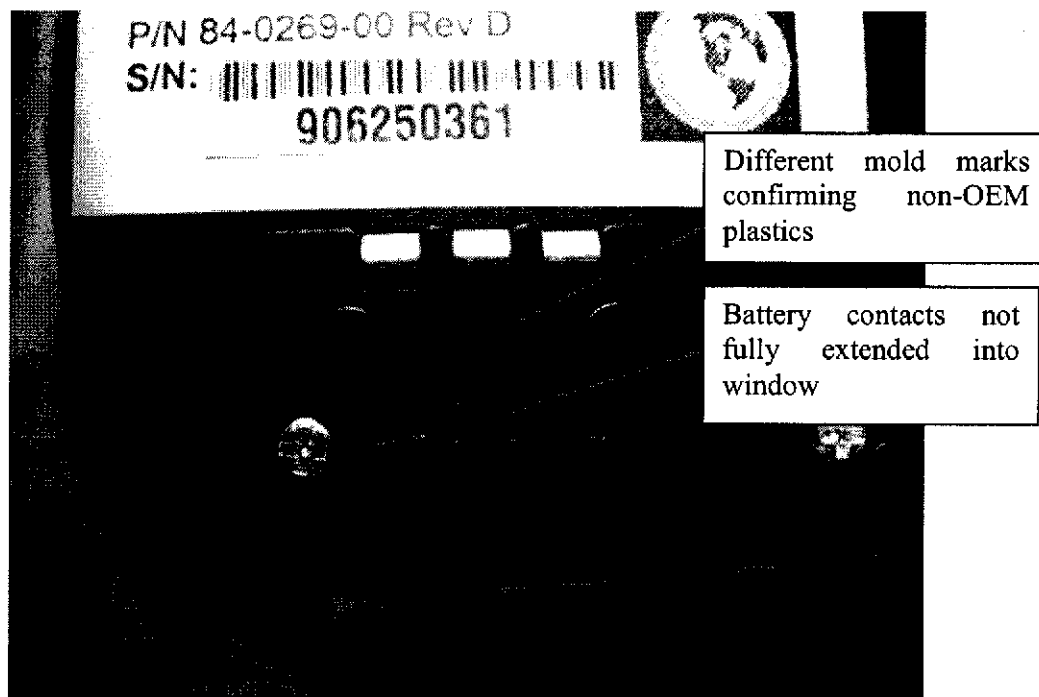
## **2. Polycom SpectraLink PTB410 Investigation**

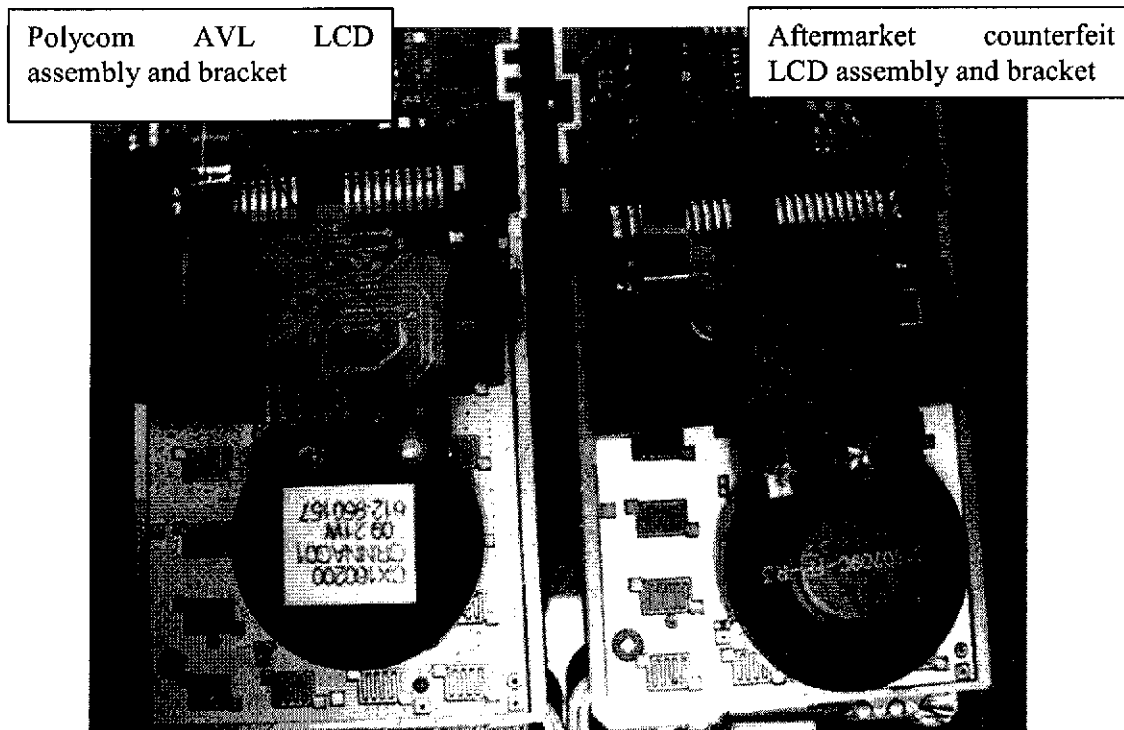
36. For the Polycom SpectraLink PTB410 investigation, five defective Polycom SpectraLink PTB410 telephony units were shipped to D&S on November 15, 2010 for repair. All five defective Polycom SpectraLink PTB410 units sent to D&S had damaged LCDs; one unit needed an ECN upgrade; two units failed the PBox test; and one was listed as INVALID by the PBox test. D&S was instructed to return the EXACT same S/N's as shipped to ensure a more proper data comparison. However, even though D&S was requested to return the same S/N's, only two of the original five S/N's were returned repaired. Five "repaired" units were returned on December 14, 2010.

37. The repairs of Polycom SpectraLink PTB410 units were determined to be of a low quality (with difficulty encountered when attempting to attach a Polycom battery to the repaired units), and the repairs were made with non-OEM parts bearing counterfeit Polycom

Marks. On information and belief, at least some of the non-OEM parts that were used in making the repairs and that bore the Polycom Marks were supplied by co-Defendant DVD. Some salient details of the Polycom SpectraLink PTB410 investigation are presented below:







38. On information and belief, D&S refurbished the defective units using non-Polycom authorized aftermarket materials. Often, however, the non-Polycom authorized aftermarket parts bore counterfeits of the Polycom Marks. For example, D&S applied different S/N labels; used different screws; used counterfeit bezels, keypads, plastic molds, LCD assemblies, brackets, and microphones; installed crooked LCDs; and installed battery contacts incorrectly. Only two of the original five S/N's sent to D&S were returned.

39. The replacing of genuine parts with non-OEM parts bearing counterfeits of the Polycom Marks allows Defendants to palm off their repair services and the repaired products as genuine Polycom products that have been repaired pursuant to Polycom quality control. Such actions are likely to cause confusion as to connection with, approval from, or permission from Polycom, when none exists. On information and belief, Defendants' acts complained of herein are willful and deliberate, making this an exceptional case.

### **3. Defendants' Websites**

40. In addition to its unauthorized use of the Polycom Registered Marks in its unauthorized repair process, several web pages on the D&S and DVD websites prominently display replicas of Polycom's Trade Dress and of several of the Polycom Marks in a manner that implies a connection with or approval from Polycom, where none exists.

41. For example, as shown in the screen capture taken from the web page <http://www.dscomm.com/polycom/> on March 17, 2011, and attached hereto as **Exhibit G**, D&S makes unauthorized use of Polycom Marks and the Polycom Trade Dress, including, but not limited to the marks of U.S. Trademark Registrations Nos.: 3,100,113, 1,912,272, 3,020,685, 1,783,295, 3,020,708, 1,794,159, 1,786,099, and 2,994,870.

42. As shown in the screen capture taken from the web page <http://www.dscomm.com/spectralink/> on March 17, 2011, and attached hereto as **Exhibit H**, D&S makes unauthorized use of Polycom Marks and Polycom Trade Dress including, but not limited to the marks of U.S. Trademark Registrations Nos.: 3,020,685, 1,783,295 and 2,994,870.

43. As shown in the screen capture taken from the web page <http://www.dvd-inc.com/goods.php?phone=PTB%20410> on March 17, 2011, and attached hereto as **Exhibit I**, DVD makes unauthorized use of Polycom Registered Marks including, but not limited to the marks of U.S. Trademark Registrations Nos.: 3,020,685, 1,783,295, and 2,994,870.

44. As shown in the screen capture taken from the web page <http://www.dvd-inc.com/goods.php?phone=6020> on March 17, 2011, and attached hereto as **Exhibit J**, DVD makes unauthorized use of Polycom Registered Marks including, but not limited to the marks of U.S. Trademark Registrations Nos.: 3,020,685, 1,783,295, and 2,994,870.

45. The prominent use of the Polycom Marks and the Polycom Trade Dress on the websites exceeds the use that is necessary to simply inform the public that the Defendants provide repair services or parts for Polycom products. While intent is not necessary for Polycom to prevail in this matter, on information and belief, Defendants prominent use of the Polycom Marks and the Polycom Trade Dress was purposely made with intent to try to trade on the

goodwill enjoyed by Polycom in the Polycom Marks and the Polycom Trade Dress. The above actions of Defendants are likely to cause confusion, mistake or deception of customers.

46. On information and belief, Defendants' acts complained of herein are willful and deliberate, making this an exceptional case.

D. IRREPARABLE INJURY TO POLYCOM

47. Defendants' use of the Polycom Marks and the Polycom Trade Dress allows for and will allow Defendants to receive the benefit of the goodwill built up at great labor and expense by Polycom in its Polycom Marks and Polycom Trade Dress, and further allows Defendants to gain acceptance for their goods and services based not on their own merits, but on an association with the reputation and goodwill of Polycom.

48. Defendants' use of the Polycom Marks and the Polycom Trade Dress constitutes an invasion of Polycom's valuable property rights in a manner that unjustly enriches Defendants.

49. Defendants' use of the Polycom Marks and the Polycom Trade Dress is likely to cause confusion with the use by Polycom of its marks for the same goods and services and in the same channels of trade, and falsely indicates to the purchasing public that the Defendants and/or its services are in some manner connected with, sponsored by, affiliated with, or related to Polycom.

50. Use by Defendants of the Polycom Marks and the Polycom Trade Dress places the valuable reputation and goodwill of Polycom in the hands of Defendants, over whom Polycom has no control.

51. Unless these acts of Defendants are restrained by this Court, they will continue and will continue to cause irreparable injury to Plaintiff and to the public, for which there is no adequate remedy at law.

52. Defendants' acts complained of herein have caused damage to Polycom in an amount to be determined at trial, and such damages will continue to increase unless Defendants are enjoined from their wrongful actions and infringements.

**COUNT ONE - TRADEMARK INFRINGEMENT OF REGISTERED MARKS UNDER  
15 U.S.C. § 1114**

53. Polycom hereby repeats and realleges Paragraphs 1–52 as if fully set forth herein.

54. The actions of Defendants referenced above constitute trademark infringement of the registered Polycom Marks and the Polycom Trade Dress under 15 U.S.C. § 1114(1).

**COUNT TWO - FEDERAL TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(C)**

55. Polycom hereby repeats and realleges Paragraphs 1–54 as if fully set forth herein.

56. The actions of Defendants described above are likely to dilute the distinctive quality of the Polycom House Marks.

57. The actions of Defendants complained of above constitute federal trademark dilution under 15 U.S.C. § 1125(c).

**COUNT THREE – UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(A)**

58. Polycom hereby repeats and realleges Paragraphs 1–57 above as if fully set forth herein.

59. The actions of Defendants complained of above constitute unfair competition in violation of the terms of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**COUNT FOUR – FEDERAL TRADEMARK COUNTERFEITING**

60. Polycom hereby alleges Paragraphs 1–59 above as if fully set forth herein.

61. The goods listed in U.S. Registration Nos. 1,783,295; 1,912,272; 1,784,786; and 1,794,159 for the marks POLYCOM, POLYCOM and the Polycom Triangles Logo, and the Polycom Triangles Logo are “teleconferencing products; namely, audio and graphic terminals, audio and graphic computer software, and audio and graphic bridges used for teleconferencing.”

62. The goods listed in U.S. Registration No. 3,767,458 for the Polycom Triangles Logo shown in the color red are “computer hardware; computer hardware and peripheral



devices; computer software and hardware for teleconferencing and video conferencing; computer software for integrating, controlling, enhancing, securing, and managing video, voice and data communications; digital telephone platforms and software; and speakerphones.”

63. Defendants’ unauthorized affixation and use of the mark POLYCOM and of a counterfeit of the Polycom Triangles Logo in connection with the sale and distribution of teleconferencing hardware and software components and products is use of a “counterfeit mark” as that term is defined in Section 32(d)(1)(B) of the Lanham Act, 15 U.S.C. §1116(d)(1)(B).

64. The goods listed in U.S. Registration No. 1,851,886 for the mark SPECTRALINK are “computer software and hardware for telephone systems, not for use with modems.”

65. The goods listed in U.S. Registration No. 2,994,870 for the mark SPECTRALINK are “telephones, telecommunication equipment and software, namely, wireless telephones; batteries; battery chargers; wireless handheld communication devices to access local wireless networks; computer communications servers for managing the quality of voice transmissions sent in a local wireless or computer network; computer hardware and software for connecting private branch exchange equipment or telephone lines to a local wireless or computer network; computer hardware and software for sending data transmissions, by way of local wireless network or computer network, to wireless handheld communication devices; and computer software for managing the quality of voice transmissions in a local wireless or computer.

66. Defendants’ unauthorized affixation and use of the mark SPECTRALINK and of a counterfeit of the mark SPECTRALINK in connection with the sale and distribution of teleconferencing hardware and software components and products is use of a “counterfeit mark” as that term is defined in Section 32(d)(1)(B) of the Lanham Act, 15 U.S.C. §1116(d)(1)(B).

**COUNT FIVE - DILUTION UNDER TEX. BUS. & COM. CODE § 16.29**

67. Polycom hereby alleges Paragraphs 1–66 above as if fully set forth herein.

68. The Polycom Marks, POLYCOM, SPECTRALINK, and the Polycom Triangles Logo are distinctive, and became so prior to Defendants’ acts complained of herein.

69. Defendants' unauthorized commercial use of the Polycom Marks in connection with the advertisement, offering for sale and/or sale of Defendants' products and services has caused and is likely to continue to cause dilution of the distinctive quality of the Polycom Marks.

70. Defendants' acts complained of above constitute dilution in violation of Texas Bus. & Com. Code § 16.29.

**COUNT SIX – TEXAS COMMON LAW UNFAIR COMPETITION**

71. Polycom hereby alleges Paragraphs 1–70 above as if fully set forth herein.

72. The acts of Defendants complained of above constitute unfair competition under the common law of the State of Texas.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Polycom, Inc. demands a trial by jury of all issues raised by the pleadings which are triable by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that:

(a) Each Defendant, its officers, agents, servants, employees, attorneys, successors, assigns, related companies, and all those acting in concert with any of them, be temporarily restrained, preliminarily and permanently enjoined and restrained from using in connection with promotion, advertising, or offering of telephones, telephone repair services, telephone component products, or any related goods or services any of the Polycom Marks, the Polycom Trade Dress or any mark confusingly similar to any of such marks or trade dress;

(b) Each Defendant, its officers, agents, servants, employees, attorneys, successors, assigns, related companies, and all those acting in concert with any of them, be required to deliver to the Court for destruction, or to show proof of destruction of, any and all displays, signs, circulars, promotional materials, advertisements and any other materials in their

possession, custody, or control that bear or depict any of the Polycom Marks or the Polycom Trade Dress or any mark confusingly similar to any of such marks or trade dress;

(c) Defendants be ordered to file with this Court and to serve upon Plaintiff, within thirty (30) days after the entry and service of an injunction, a report in writing and under oath setting forth in detail the manner and form in which the respective Defendant has complied with the injunction;

(d) An accounting be ordered to determine each Defendant's profits resulting from its infringement and unfair competition, and that such profits be increased at least three times and be paid over to Plaintiff pursuant to 15 U.S.C. §§1117(a) and (b);

(e) Plaintiff be awarded its actual damages resulting from Defendants' infringement and that, pursuant to 15 U.S.C. §1117(a) and (b), the amount of such damages be trebled;

(f) Plaintiff recover its reasonable attorney fees under 15 U.S.C. §1117(a) because this is an exceptional case or under 15 U.S.C. §1117(b) in light of Defendants' use of a counterfeit mark;

(g) In the alternative, and at Plaintiff's election before final judgment, pursuant to 15 U.S.C. § 1117(c), Plaintiff be awarded statutory damages of up to two million dollars (\$2,000,000) per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; and

(h) Plaintiff recover its costs of this action and such other further relief as this Court may deem appropriate.

March 17, 2011

Respectfully submitted,

/s/ John C. Cain  
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